

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant:	Jeffrey Dlott et al.	Examiner:	Shaawat, Mussa
Serial No.:	09/705,393	Group Art Unit:	3627
Filed:	November 2, 2000	Docket No.:	2266.002US1
Title:	METHOD AND SYSTEM TO COMMUNICATE AGRICULTURAL PRODUCT INFORMATION TO A CONSUMER		

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Mail Stop AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

This responds to the advisory action mailed on September 14, 2007. Applicants request review of the final rejection of claims in the above-identified application. No amendments are submitted with this request, which is filed with a notice of appeal for the reasons stated below.

§103 Rejection of the Claims

Claims 37-42 were rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,478,990 to Montanari et al. (hereinafter “Montanari”) in view of U.S. Patent No. 6,119,531 to Wendte et al. (hereinafter “Wendte”) and U.S. Patent No. 5,285,383 to Lindsey et al. (hereinafter “Lindsey”) with official notice. As will be fully explained below, the combination of Montanari in view of Wendte and Lindsey does not raise a *prima facie* case of obviousness against any of independent claims 37 and 42.

In support of the 35 U.S.C. § 103(a) rejections, the final office action mailed on June 6th, 2007 asserts that Montanari discloses “comparing the agricultural product data against a compliance requirement,” as recited in independent claims 37 and 42. Applicants disagree with the final office action’s characterization of Montanari relative to independent claims 37 and 42 because the portion of Montanari relied upon by the final office action (col. 1, lines 46-61) does not disclose “comparing the agricultural product data against a compliance requirement,” as recited in independent claims 37 and 42.

At column 1, lines 46-61, Montanari discloses:

With the rise of free markets and the awareness of a global economy, a system is required that can identify food products that cross international boundaries. Health and safety regulations with respect to food products

differ in various countries and a system is required that can verify the source and origin of products to ensure compliance with such varied regulations. Attitudinal barriers also exist in various countries that prevent the establishment of a true free market. For example, some Japanese have shown a preference for Australian beef as opposed to U.S. beef based upon a belief that the hygienic practices used in Australia are better than those used in the U.S. A system is required that enables the tracing back of process steps so that such concerns are addressed.

This portion of Montanari merely discloses a need for “a system ... that can identify food products that cross international boundaries” and “can verify the source and origin of products to ensure compliance with such varied regulations” (col. 1, lines 46-61). Here, Montanari merely provides a general summary of the need for such a system and does not disclose any details on how compliance with such regulations is ensured. The paragraph located at column 1, lines 46-61 simply does not disclose any comparison of agricultural product data.

In response, an advisory action mailed on September 14, 2007 at page 2 asserts that “Montanari discloses a system able to verify the source and origin of products to ensure their compliance with the Health and Safety Regulations (see col. 1 lines 46-61), i.e. comparing the agriculture product data against a compliance requirement.” Again, the applicants disagree with the advisory action’s characterization of Montanari relative to independent claims 37 and 42. In particular, Montanari further explains the verification process being used in the context of “track[ing] the origin and subsequent production history of food products” (col. 8, line 67 – col. 9, line 1). For example, “lot symbols can be kept track of to verify the source and particular processing steps involved in the bringing of such products to the wholesale and/or retail consumer” (col. 9, lines 15-18). In another example, Montanari describes “tracking of food products ... to enable verification of product origination” (Abstract). The tracking of food products for use in verification of product origination does not involve comparisons with any compliance requirements.

Although Montanari does explain how food products are tracked, Montanari does not further explain anywhere how compliance with such regulations is ensured. Montanari only identifies a need to solve the problem of compliance with such regulations. In particular, Montanari describes “a system *is required* that *can* verify the source and origin of products *to ensure compliance* ...” (col. 1, lines 52-54). Here, Montanari describes compliance in the

context of a problem statement, and not a description of a system that ensures compliance. In fact, in the context of this particular portion of Montanari (col. 1, lines 46-61), such a system does not even exist because Montanari is merely describing a hypothetical system. As a result, Montanari cannot reasonably be considered to disclose or even to suggest “comparing the agricultural product data against a compliance requirement,” as recited in independent claims 37 and 42.

To establish a *prima facie* case of obviousness, the prior art references must disclose or suggest all the claim features. Here, in view of the incorrect characterization of Montanari, the references as combined do not disclose or suggest all the features of the claimed invention. Accordingly, the applicants submit that independent claims 37 and 42 are patentable under 35 U.S.C. §103(a) over Montanari in view of Wendte and Lindsey. Claims 38-41, each of which depends from independent claim 37 or 42, are likewise patentable under 35 U.S.C. §103(a) over Montanari in view of Wendte and Lindsey for at least the same reasons set forth above regarding independent claims 37 and 42. Accordingly, the obviousness rejections of pending claims 37-42 are improper and should be withdrawn.

CONCLUSION

Applicants respectfully submit that the claims are in condition for allowance, and notification to that effect is earnestly requested. The examiner is invited to telephone applicants' attorney at (408) 278-4047 to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

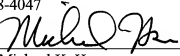
Respectfully submitted,

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Date 11/6/2007

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CERTIFICATE UNDER 37 CFR § 1.8: The undersigned hereby certifies that this correspondence is being filed using the USPTO's electronic filing system EFS-Web, and is addressed to: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on this 6, day of November 2007.

Name: Dawn R. Shaw Signature: 